

**RESPONDING TO REQUESTS
UNDER THE
MARYLAND PUBLIC INFORMATION ACT:
A SUGGESTED PROCESS**



OFFICE OF THE ATTORNEY GENERAL

**Douglas F. Gansler, Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202**

Revised September 2011

RESPONDING TO REQUESTS UNDER THE MARYLAND PUBLIC INFORMATION ACT: A SUGGESTED PROCESS

The basic mandate of the Public Information Act ("PIA") is to enable people to have access to government records without unnecessary cost or delay. Custodians have a responsibility to provide such access, unless the requested records fall within one of the exceptions provided in the PIA. The keys to compliance with the PIA are:

(1) a *clear process* for handling requests for records;

(2) quality *training* about the law for frontline personnel; and

(3) the same attitude of *professionalism and customer service* expected for other agency functions.

The following guidelines are intended to offer custodians of records practical ways to enhance compliance with the letter and spirit of the PIA. They reflect best practices, but they are not meant to cover all aspects of the law. Nor are they intended to create any legal rights for any person; the Act itself and agency regulations that govern the handling of PIA requests set forth the legal rights and obligations under the PIA.

1. IDENTIFY KEY PERSONNEL

Who receives requests for records at the agency? Who should respond to them?

A. Designate an agency PIA coordinator (or more than one, if need be) who is responsible for PIA compliance.

B. Set clear guidelines for those who handle PIA requests; for example, make sure that whoever opens the mail knows to whom

a PIA request should be sent and the importance of delivering the request promptly.

2. SEPARATE THE SIMPLE FROM THE UNUSUAL OR COMPLEX

Are the requested records in a category that you have previously identified as available to anyone immediately, no questions asked?

A. If YES:

(i) Make the records available immediately for inspection, even if the request is made orally;

(ii) If the requester wants copies (paper or electronic), charge no more than a reasonable, pre-set fee.

You should consider designating commonly requested documents that are available on this basis.

B. If NO:

(i) If the request was made orally, ask the requester to write out the request. You may find it useful to devise a form for this purpose.

(ii) Promptly send the form to the person in the agency designated to handle PIA requests (or to the person who handles this type of PIA request, if more than one person has been designated).

Should you ask requesters who they are or why they want the records?

In general, no. In some circumstances, however, you will need to identify who the requester is. Some records (*e.g.*, medical files, personnel files) that are not available to the general public are available to the subject of the records, who is called a “person in interest” in the PIA. If the request involves a type of record for which a person in interest has special rights, you need to find out if the requester is a person in interest.

3. INFORM THE REQUESTER PROMPTLY OF PROBLEMS WITH THE REQUEST

Does the request cover records in the agency’s custody? Are they described in a way that allows the records to be found after a reasonable search?

A. If you can’t search for the records because they don’t exist (there is no duty to create records) or you don’t have them, tell the requester promptly (within, at most, 10 days); if you know that another agency has the records, tell the requester; if feasible, you may offer to forward the request to that agency.

B. If you can’t search for the records because the request is unclear or unreasonably broad, promptly ask the requester to clarify or narrow the request. If you think it would be helpful, you may offer to assist the requester in reframing the request. Do not simply wait 30 days and deny the request only because it is unclear or unreasonably broad.

C. If there is a reason why the search or review of the records will take an unusual amount of time (for example, the request is voluminous, covers archived records, or includes many documents that must be reviewed for possible confidential or privileged information), explain the situation, as soon as you know it, and its cost implications to the requester.

4. RETRIEVE – REVIEW – RESPOND

A. If your agency has the records and can find those covered by the request after a reasonable search, promptly retrieve the records.

B. Review the records, with legal assistance as needed, to determine their status under the PIA.

C. Decide whether your review requires information from outside the agency and, if so, request it right away. Two common situations:

(i) A record would be available to a person in interest, but not to a member of the general public. If applicable, ask for the information you need to determine whether the requester is a person in interest.

(ii) A record contains information that appears to be confidential commercial or financial information. Ask the person or entity that submitted the information whether the information is regarded as confidential and, if so, why.

D. Determine if any of the exemptions in the PIA (or in another law) apply to the record or a portion of the record.

(i) If an applicable exemption *requires* that all of the information be withheld from disclosure, withhold the entire record. If only part of the information is exempt, redact the exempt portion.

(ii) If an applicable exemption *permits, but does not require*, that information be withheld from disclosure, carefully consider how you will exercise the discretion that the law gives you. In general, disclose the record unless doing so would cause a harm to the public interest that you can describe.

(iii) If *no exemption* applies, disclose the record unless, within 10 days, your agency will go to court for an order allowing you to withhold the record on the ground that disclosure would cause “substantial injury to the public interest.” Courts will likely grant such orders only in extraordinary circumstances.

E. Complete the retrieval and review process as quickly as possible, but in any case within 30 days of receiving the request, unless the requester agrees to an extension.

(i) If you determine that records are to be disclosed, notify the requester immediately that the records are available for inspection or copying.

(ii) If you determine that the records are to be withheld in whole or in part, promptly send the requester a letter explaining why those records are exempt from disclosure, citing legal authority and telling the requester how to seek review of your decision.

5. PROVIDE COPIES, IF REQUESTED.

A. If the requester seeks copies, provide them within a reasonable time. If the request is voluminous, discuss a mutually agreeable schedule – for example, providing copies on a rolling basis.

B. If copies are requested in an electronic or other special format, honor that request if it is possible to do so without significant cost or burden on the agency. In some circumstances, the requester may have a right to an electronic copy

6. CHARGE ONLY REASONABLE, COST-BASED FEES.

A. Search and Review Time. Decide in advance what method you will use to charge for the time devoted to search and review; the first two hours of search and review time are free.

B. Copies. Decide in advance what you will charge per copy. You may decide that it is more cost-effective not to charge for small numbers of copies.

C. Rates. Fees must be related to the recovery of actual costs. They should not be set so as to deter requests to inspect records or get copies.

D. Fee Waivers. If the requester asks that you waive the fees, you may do so if a waiver would be in the public interest. Consider the ability of the applicant to pay, whether the information is sought for a broad public purpose or for a narrow personal or commercial interest, and other relevant factors.

More information about the PIA may be found in the Attorney General’s manual, available online at:

<http://www.oag.state.md.us/opengov/pia.htm>